

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

**Prosecution Proposed
Case Calendar
Update**

12 April 2012

1. The proposed calendar is based upon several assumptions. To the extent these assumptions prove to be incorrect or too ambitious, the schedule will be correspondingly longer. These assumptions are:

a. The same assumptions listed in the Prosecution's Proposed Case Calendar and Update listed in Appellate Exhibits I and XX.

b. The Court is currently scheduling Article 39(a) sessions with the following default schedule: two weeks for parties to file motions; two weeks for parties to file responses; five days for parties to file replies; and one week for the Court to review all pleadings before the start of the motions hearing.

c. The command will expend less funds by three-day long motions hearings starting no sooner than Wednesday of each week because two days are required for infrastructure setup prior to the beginning of the hearing. Ensuring all days are duty days minimizes cost based on contracted work and civilian salaries.

d. The parties do not file motions outside this motions calendar; otherwise, this calendar will likely expand and move each phase to a later date.

2. Prosecution Proposed Calendar. The prosecution initially separated the projected issues into seven phases. Based on the defense proposed schedule, Phase 2 has been separated into two separate phases—Phases 2(a) and 2(b).

a. **Phase 1. Immediate Action (21 February 2012 - 16 March 2012)**

b. **Phase 2(a). Legal Motions, excluding Evidentiary Issues (29 March 2012 - 26 April 2012)**

(1) **Defense Motion to Dismiss all Charges and their Specifications with Prejudice**

(A) Filing: 15 March 2012 (filed early)

(B) Response: 12 April 2012

(C) Reply: 17 April 2012

(D) Article 39(a): 24-26 April 2012

(2) **Government Motion for Appropriate Relief to Preclude Actual Harm or Damage from the Merits Portion of Trial**

- (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (3) **Defense Motion to Dismiss Article 104 Offense**
- (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (4) **Defense Motion to Dismiss Specification 1 of Charge II**
- (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (5) **Defense Unreasonable Multiplication of Charges Motion**
- (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (6) **Defense Renewal for Motion to Compel Discovery of Computers**
- (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
 - (C) Reply: 17 April 2012
 - (D) Article 39(a): 24-26 April 2012
- (7) **Defense Renewal for Bill of Particulars**
- (A) Filing: 6 April 2012
 - (B) Response: 17 April 2012
 - (C) Reply: N/A
 - (D) Article 39(a): 24-26 April 2012
- (8) **Reciprocal Discovery Requests**
- (A) Filing: 29 March 2012
 - (B) Response: 12 April 2012
- (9) **MRE 404(b) Disclosures**
- (A) Filing: 6 April 2012
- (10) **Updated Proposed Case Calendar**
- (A) Filing: 12 April 2012
 - (B) Response: 17 April 2012
 - (C) Reply: N/A

(D) Article 39(a): 24-26 April 2012

(11) Results of Hard Drive Searches to Defense in Response to Defense Motion to Compel Discovery #1

(A) Date: 20 April 2012

(12) Government Notification to Court Whether Relevant Files Exist with DOS, FBI, DIA, ONCIX, and CIA

(A) Filing: 20 April 2012

(13) Government Notification to Court of Whether it Anticipates Limited Disclosure or Claim of Privilege, based on (12) above

(A) Filing: 20 April 2012

c. Phase 2(b). Legal Motions, excluding Evidentiary Issues (10 May 2012 - 8 June 2012)

(1) Defense Motion to Dismiss All Charged Offenses under 18 U.S.C. 793(e)

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(2) Defense Motion to Dismiss All Charged Offenses under 18 U.S.C. 1030(a)(1)

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(3) Government Motion for Proposed Lesser Included Offenses

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(4) Updated Proposed Case Calendar

(A) Filing: 10 May 2012

(B) Response: 24 May 2012

(C) Reply: 30 May 2012

(D) Article 39(a): 6-8 June 2012

(5) Disclosure of Unclassified Results of 3 Damage Assessment Searches to Defense in Response to the Court's Ruling, 30 March 2012

(A) Filing: 18 May 2012

(6) Disclosure under RCM 701(g)(2) or MRE 505(g)(2) of all Information (Unclassified and Classified) to the Court in Response to the Court's Ruling, 30 March 2012

(A) Filing: 18 May 2012

(7) Government Filing for In Camera Proceeding IAW MRE 505(i) with Notice to Defense (if Privilege is Claimed) in Response to the Court's Ruling, 30 March 2012

(A) Filing: 18 May 2012

(B) Response: 1 June 2012

(C) Reply: N/A

(D) Article 39(a): 6-8 June 2012

(8) Witness Lists Exchanged

(A) Filing: 4 June 2012

(B) Government Response: 11 June 2012¹

d. Phase 3. Evidentiary Issues *not* Involving Classified Information under MRE 505 (22 June 2012 - 20 July 2012)

(1) Defense Motion to Compel Discovery #2

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(2) Government Motion to Compel Discovery

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(3) Motions *in Limine*

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

(4) Motions to Suppress

(A) Filing: 22 June 2012

(B) Response: 6 July 2012

(C) Reply: 11 July 2012

(D) Article 39(a): 18-20 July 2012

¹ The defense witness list should be provided to the United States prior to motions to compel witnesses and experts. Those motions should occur before the defense must provide MRE 505(h) notification, based on the defense likely eliciting classified information from witnesses.

- (5) **Pre-Admit Evidence**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (6) **Pre-Authenticate Evidence**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (7) **Requests for Judicial Notice**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (8) **Privileges**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (9) **Proposed Members Instructions for all Charged Offenses**
 - (A) Filing: 22 June 2012²
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (10) **Compel Experts**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012
- (11) **Compel Witnesses**
 - (A) Filing: 22 June 2012
 - (B) Response: 6 July 2012
 - (C) Reply: 11 July 2012
 - (D) Article 39(a): 18-20 July 2012

² Since these instructions depend on the outcome of the motions to dismiss in Phase 2, the United States recommends scheduling this motion during Phase 3.

(12) Defense Notice of Intent to Disclose Classified Information under MRE 505(h)(1)

(A) Filing: 22 June 2012³

e. Phase 4. Evidentiary Issues Involving Both Unclassified and Classified Information under MRE 505 (3 August 2012 – 4 September 2012)⁴

(1) Motions *in Limine*

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 22 August 2012
- (D) Article 39(a): 29-31 August 2012

(3) Motions to Suppress

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 22 August 2012
- (D) Article 39(a): 29-31 August 2012

(4) Pre-Admit Evidence

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 22 August 2012
- (D) Article 39(a): 29-31 August 2012

(5) Pre-Authenticate Evidence

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012
- (C) Reply: 22 August 2012
- (D) Article 39(a): 29-31 August 2012

(6) Litigation Concerning MRE 505(h) and MRE 505(i)⁵

- (A) Filing: 3 August 2012
- (B) Response: 17 August 2012

³ The defense should provide notice under MRE 505(h) when it files its witness list, so that the United States may start evaluating the list and more efficiently process the request through relevant Original Classification Authorities. If the privilege is required to be invoked, then this will provide the United States sufficient time to complete the necessary classification reviews, prior to Phase 4.

⁴ This process will likely require the military judge to review classified information within a special facility or under special handling procedures. Additionally, this process will likely take some time for the military judge to make her rulings on all classified information evidentiary motions.

⁵ This pretrial litigation encompasses any judicial review of discoverable information that the United States previously listed in its proposed case calendars. As of today, the United States anticipates the Court requiring fifteen duty days to review material; however as the prosecution continues its due diligence searches, the Court might require more time.

- (C) Reply: 22 August 2012
- (D) Article 39(a): 29-31 August 2012

(7) Production of Compelled Discovery for Defense Motion to Compel Discovery #2
(A) Date: 17 August 2012⁶

(8) Production of Compelled Discovery for Government Motion to Compel Discovery
(A) Date: 14 August 2012

(9) Defense Notice of Accused's Forum Selection and Notice of Pleas in Writing
(A) Date: 4 September 2012⁷

f. Phase 5. Miscellaneous Motions (14 September 2012 – 19 October 2012)

(1) Grunden Hearing for all Classified Information

- (A) Filing: 14 September 2012
- (B) Response: 28 September 2012
- (C) Reply: 3 October 2012
- (D) Article 39(a): 16-19 October 2012

(2) Article 13

- (A) Filing: 7 September 2012⁸
- (B) Response: 28 September 2012
- (C) Reply: 3 October 2012
- (D) Article 39(a): 16-19 October 2012

(3) Speedy Trial, including Article 10

- (A) Filing: 7 September 2012⁹
- (B) Response: 28 September 2012
- (C) Reply: 3 October 2012
- (D) Article 39(a): 16-19 October 2012

(4) Pre-Qualify Experts

⁶ This date is proposed for unclassified information. If the information is classified, the United States will evaluate whether it should request a continuance, in order to properly determine how many original classification authorities must approve production or an alternative under MRF 505.

⁷ If the accused selects a panel, the United States proposes the panel be notified no less than sixty days prior to trial, in order to coordinate for extended special duty and travel.

⁸ The filing date of one week earlier for the defense motions is in accordance with their schedule to give the United States the necessary time to respond.

⁹ The filing date of one week earlier for the defense motions is in accordance with their schedule to give the United States the necessary time to respond.

- (A) Filing: 14 September 2012
- (B) Response: 28 September 2012
- (C) Reply: 3 October 2012
- (D) Article 39(a): 16-19 October 2012

(5) Any Additional Motion that does not have an Identified Deadline

- (A) Filing: 14 September 2012
- (B) Response: 28 September 2012
- (C) Reply: 3 October 2012
- (D) Article 39(a): 16-19 October 2012

(6) Proposed Questionnaires

- (A) Filing: 14 September 2012
- (B) Response: 28 September 2012
- (C) Reply: 3 October 2012
- (D) Article 39(a): 16-19 October 2012

g. Phase 6. Member Selection (22 October 2012 – 31 October 2012)

(1) Questionnaires to Panel Members

- (A) Filing: 22 October 2012
- (B) Response: 25 October 2012
- (C) Reply: N/A
- (D) Due to Defense: 27 October 2012

(2) Voir Dire Questions

- (A) Filing: 31 October 2012
- (B) Response: N/A
- (C) Article 39(a): N/A

(3) Flyer Due

- (A) Filing: 31 October 2012

h. Phase 7. Trial by Members (5 November 2012 – 23 November 2012)

- (1) Article 39(a): 5 November 2012
- (2) Voir Dire: 6 November 2012
- (3) Trial: 6-9 November 2012; 12-16 November 2012; 19-23 November 2012


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